BRUNEI REPORT

R.J. McGUINNESS v. AHMAD ZAINI

[O.C.J. (Roberts C.J.) February 8, 1980]
[Kuala Belait — Civil Suit No. 217 of 1979]

Damages — Quantum — Expatriate injured — Amputation above-knee and severe comminuted fracture of tibia and fibula.

Damages — Brunei — Principles applicable — Inflation.

The plaintiff in this case was an expatriate aged 34 who worked as assistant driller at a monthly salary of US$2,250 in Brunei. He was employed on a two-year contract from February 10, 1976. On July 13, 1978 he was injured when his motorcycle collided with a motorcar driven by the defendant. It was agreed between the parties that the defendant was 90% to blame for the accident.

The plaintiff's injuries consisted of multiple abrasions to the chest and abdomen and severe comminuted fracture of the right tibia and fibula. There were several deep lacerations to the upper and lower leg with a large penetrating injury of his foot complicated by fracture of the metatarsals. An above-knee amputation was carried out on July 22, 1978, as a result of which he could not play active sports.

Held: (1) since by virtue of the Application of Laws Enactment (Cap. 2) the common law of England has been imported into the law of Brunei, it is the common law, as expounded in the decisions of the English courts, which must govern the principles on which damages in Brunei are assessed;

(2) the Brunei awards should, in general, follow those of Singapore and Malaysia, provided that the awards in Singapore and Malaysia are based upon the same principles of law which are applicable to Brunei;

(3) the plaintiff should be awarded special damages of $74,452 and general damages of $421,344 (being $50,000 for pain and suffering and loss of amenities, $331,200 for loss of pension and $18,144 for cost of future Renewal of Prosthesis). A deduction of 10% of the total award was allowed for the admitted negligence of the plaintiff.

[Editorial Note: There was no appeal in this case.]

Cases referred to:-

(1) *Bradburn* v. *G.W.R.* (1874) L.R. 10 Ex. 1.
(2) *Walker* v. *John McLean & Sons Ltd.* [1979] 2 All E.R. 965.
(3) *Anderson* v. *Anderson & Wilson*, reported in *Kemp and Kemp*, Quantum of Damages Vol. 2., Sweet and Maxwell (1975) at 10-250/1.
(4) *Mahmood bin Kailan* v. *Goh Seng Choon* [1976] 2 M.L.J. 239.
(5) *Lim Poh Choo* v. *Camden and Islington Area Health Authority* [1979] 1 All E.R. 332.

CIVIL SUIT.

K.E. Hilborne for the plaintiff.

H. Hangchi for the defendant.

Cur. Adv. Vult.

Roberts C.J.: On July 13, 1978, the plaintiff, Robin James McGuinness, who was born on May 20, 1944 and thus was 34 at the time of the accident, was injured when the motor cycle which he was riding came into collision with a motorcar KC.299 driven by the defendant, in Jalan Jaya Negara, Kuala Belait.

It has been agreed between the parties that the defendant was 90% to blame for the accident. I was, therefore, called upon to consider only the assessment of damages.

With the agreement of counsel, where it is necessary to convert currencies, I have taken a figure of 2.2 Brunei dollars (B$) as representing one United States dollar (US$) and 2.4 Brunei dollars as representing one Australian dollar (A$). The dollars of Brunei, Singapore and Malaysia are virtually on a par.

MEDICAL HISTORY

The plaintiff was admitted to the Panaga Hospital immediately after the road accident on July 13, 1978.

The injuries which he sustained are described in two medical reports by Dr. R.J. Hamshere of Panaga Hospital.

The relevant extract from the first report, dated August 16, 1978 reads as follows: —

"Mr. McGuinness' injuries consisted of multiple abrasions to the chest and abdomen and severe comminuted fracture of the right tibia and fibula. There were several deep lacerations to the upper and lower leg with a large penetrating injury of his foot complicated by fracture of the metatarsals. He had no head injuries or loss of consciousness.

On admission, his general condition was good and under general anaesthesia, the wounds were cleaned and debridement carried out. Reduction of the fractured tibia and fibula was attempted and the mobilisation maintained by back slab. However, despite this treatment and anti-biotics, all the wounds became infected and a second drainage procedure was performed.

Again, despite this, there was little improvement and it was evident that amputation was necessary in order to save the patient's life.

An above-knee amputation was carried out on the 22nd July, 1978 from which he made a good recovery and he was discharged from here to Australia for fitting of a prosthesis on the 4th August, 1978.

Once his limb prosthesis is fitted, he may be able to play certain sports such as golf, and active sports, for example, football will be impossible.

He will find difficulty in the labour market and will not be able to carry out the sort of job he has been doing up until his accident but he will be able to cope with sedentary occupation.

For a man of his age and occupation this is a severe disability, but the final outcome is difficult to judge at this point.

According to the Brunei Government tables, the percentage disability for loss of a lower limb is 70% while those of the British Government is 60%."

Dr. Hamshere's second report, dated January 31, 1980 reads as follows: —

"I saw Mr. McGuinness today to give an up-to-date appraisal.

He was fit, managing with the artificial leg remarkably well although the present model is far from satisfactory. It requires body straps to maintain it in position, the knee joint is faulty and the upper stump recess rubs on the skin it is growing leading to soreness such that he has to rest.

He will never be able to play active sports again or to get a job with an oil company which would require him to climb, walk long distances or go off-shore.

I would put his disability at 70%".

HEADS OF DAMAGE

It was agreed by counsel that I have to consider the following heads of damage: —

1. Special damages. Cost of prosthesis.
2. Special damages. Loss of past earnings.
3. Pain and suffering and loss of amenities.
4. Loss of future earnings.
5. Loss of pension.
6. Cost of future renewal of prosthesis.

1. *Special damages. Cost of prosthesis*

An item of A$1000 (B$2400) was claimed for expenses incurred by the plaintiff in the provision of an artificial limb.

In evidence, however, it emerged that Reading and Bates, his employers, had met the cost of his original prosthesis and that so far, the plaintiff's expenses under this head have been limited to those set out in the letter of January 22, 1980 from the Department of Veterans' Affairs of the Australian Government.

This shows that the Department's charges to the plaintiff have been A$78.08 or B$187 and I award that sum under this head.

2. *Special damages. Loss of past earnings*

In the particulars of special damage contained in the amendment dated February 4 submitted by the plaintiff, which I permitted to be made, the amount claimed for loss of earnings was B$86,625, at the rate of US$2,250 per month from August 20, 1978 to date.

Mr. Michael Cardenas, the Area Administrator of Reading and Bates, the plaintiff's employers, testified that Mr. McGuinness was employed on a two-year contract from February 10, 1976, at a monthly salary of US$2,250. This figure comprised US$1,400 basic pay, US$500 area premium (a local allowance for expatriates working in Brunei) and US$350 bonus, which would have been payable at the end of each twelve month period to the plaintiff.

Mr. Hilborne wanted me to include in this item of special damage some allowance for the free housing with which the plaintiff was provided. I might have been disposed to make some addition for this, but items of special damage must be specifically pleaded; this item was not, and no amendment to include it was sought.

I have to consider what deductions should be made from this sum of B$86,625. There are three possible deductions: —

(a) Payments to the plaintiff under a disablement policy. The plaintiff received, in October 1978, a payment of US$33,500 under an accidental death and dismemberment policy, which was taken out on his behalf by Reading and Bates. A reference to such a policy was contained in the booklet called "Your Personal Benefits Report", relating to the plaintiff and adduced in evidence. The provision of such insurance cover was one of the advantages stated to accrue to employees of the company, which seems, if I may say so, to treat its employees with considerable generosity.

In a letter to the plaintiff, dated October 24, 1978, the Insurance claims manager of Reading and Bates informed the plaintiff that the benefit payable was US$33,500.

The tenor of the letter was such as to suggest that this was a benefit due under an insurance policy, and not an ex-gratia payment. I accept that it was a benefit to which the plaintiff was entitled by virtue of a policy of insurance taken out for his benefit by his employers.

In an action for injuries caused by the defendant's negligence, a sum received by the plaintiff on an accident insurance policy cannot be taken into account in reduction of damages — see *Bradburn* v. *G.W.R.*[1] In view of this long established authority, no deduction should be made in respect of this payment received by the plaintiff.

(b) Earnings by the plaintiff in Australia. A figure of A$3,150 or B$7,560 was included in the statement of claim and substantiated by the plaintiff in evidence. This sum of B$7,560 should be deducted.

(c) The plaintiff was entitled to draw A$50 a week unemployment pay from the Commonwealth Employment Service while he was out of work.

He did so for part of the time, but not for all of it. As he was working in Australia for 5 months, and his claim for loss of earnings covers a period of about 17½ months, I consider a deduction should be for employment pay for about 9 months. This allows a reasonable period of readjustment by the plaintiff before he started to look for work. I would deduct A$2,000 or B$4,800.

Under this head, therefore, I award B$86,625 less B$7,560 and B$4,800 — a total of B$74,265.

3. *Pain and suffering and loss of amenities*

I was much impressed by Mr. McGuinness, both as a witness and as a person. The loss of a leg, by a highly active man who took great pride in his sporting prowess and in his physical condition, must have been a severe shock, psychologically as well as physically.

He has faced up to the dramatic change in his life with much courage and good sense and appears to have come to terms, as far as this is reasonably possible, with his grave disability.

He described, in evidence, how his main interests in life before the accident, other than his work, consisted of games and sports of various kinds. He had been a keen horseman, he had played squash, golf, rugby and cricket and did a fair amount of swimming, walking and mountain climbing.

The only physical activity in which he can now indulge is a short game of golf. As he said, however, he becomes tired after about 9 holes. It says much for his determination to live as normal a life as possible that he should have overcome his disability to the extent of playing golf again at all.

Thus, his capacity for enjoyment of life has been severely damaged by his injuries. This is a factor which is to be taken into account when attempting to gauge the right measure of damages for pain and suffering and loss of amenities.

Before seeing whether guidance can be derived from an examination of other awards for the amputation of a leg, I must consider three preliminary matters:

(a) Should Brunei, in general terms, follow United Kingdom scales of award or those of Malaysia/Singapore;

(b) Which are the principles of law to apply;

(c) Should allowance be made for inflation.

UNITED KINGDOM OR MALAYSIA/SINGAPORE

The circumstances of life in Brunei seem to me to be so much more closely linked to those of Singapore and Malaysia than the United Kingdom, that it is to Singapore and Malaysia that we should look, when attempting to devise an appropriate scale for damages for injuries sustained in Brunei.

It was said that Briggs C.J. expressed the opinion, in a case tried some years ago of which I have not seen any report, that awards in Brunei should be somewhat higher than those of Singapore Courts. This was apparently on the basis that the standard of living was higher in Brunei than in Singapore or Malaysia.

Unless I have evidence to justify me in doing so, I am not prepared to draw this inference. The currencies of Singapore, Malaysia and Brunei are virtually on a par, which *prima facie* suggests that the purchasing power of each of the three dollars is roughly the same. I, therefore, consider that Brunei awards should, in general, follow those of Singapore and Malaysia, provided that the awards in Singapore and Malaysia are based upon the same principles of law which are applicable to Brunei.

PRINCIPLES APPLICABLE IN BRUNEI

Since by virtue of the Application of Laws Enactment (Cap. 2) the common law of England has been imported into the law of Brunei, it is the common law, as expounded in the decisions of the English courts, which must govern the principles on which damages in Brunei are assessed.

If, therefore, the courts of Singapore or Malaysia have not followed common law principles, the courts in Brunei should not feel themselves, to that extent, obliged to pay attention to the general level of awards of those courts.

WHAT ABOUT INFLATION

What I have just said about the application of the principles of common law is relevant in considering the question of inflation.

There is nothing in the brief outline of the Singapore or Malaysian cases to which my attention has been drawn which suggests that any significant allowance has been made in those awards for the effects of inflation.

The correct approach at common law has been set out by the Court of Appeal in *Walker* v. *John McLean and Sons Limited.*[2] In that case, the trial judge awarded to the plaintiff damages of £35,000 for pain, suffering and loss of amenities, including loss of expectation of life and of sexual function. The defendants appealed, contending that the award was too high by comparison with the current level of awards for similar cases.

Cumming Bruce L.J., who delivered the judgment of the Court of Appeal, observed that the purchasing value of the pound sterling had halved in the 16 years from 1957 to 1972 and had halved again during the six years from 1973 to 1978. He went on to say at page 970 — "We are satisfied that the level of damages for loss of amenities awards in the most serious cases since 1973 has not infrequently represented a lower real measure of compensation than the damages commonly awarded in such cases before the rate of inflation accelerated dramatically in the years 1973 to 1978".

Later in his judgment, he expresses the court's view as to the proper approach to inflation — "We do not encourage the application of a rigid multiplier to accord arithmetically with the changing value of the pound shown in the table to which we refer. We content ourselves with the observation that, by his award of £35,000 under this head, the judge restores a consistency with awards made before 1973 which cannot be found in many awards made since that year".

In essence, therefore, the Court of Appeal has said that a fall in the value of money must be taken into account when attempting to obtain guidance for a current award from awards of general damages for similar injuries in the past.

Mr. Hilborne drew my attention to an award of $35,000 in Singapore for pain and suffering and loss of amenities, where there had been an amputation of the leg above the knee. This was a 1977 case, and he submitted that it was far too low.

It would, he said, be a rough equivalent of not much over £8,000 in England, which was clearly out of line with a number of recent English awards to which he drew my attention. Of these, he placed particular emphasis on *Anderson* v. *Anderson*[3] of which the only report available was a summary in *Kemp and Kemp* on "The Quantum of Damages". In this case the court expressed the opinion that the correct award would be £20,000 to £25,000 for the loss of a leg by a middle aged person in good health.

This figure is well above the general level of about £10,000 which seems to have been an average award for this kind of injury in England in the early 1970's and shows how inflation has recently influenced the size of awards there.

I thus approach the Singapore and Malaysian awards on the basis that when they are to be applied to Brunei, there should be an additional element for inflation. They should not rise mathematically in step with inflation, but they should take account in general terms of the falling purchasing power of the dollar.

COMPARISON WITH SINGAPORE AND MALAYSIA

Mr. Hangchi, for the defendant, cited two cases. In *Mahmood bin Kailan* v. *Goh Seng Choon,*[4] the Federal Court in August 1976 upheld an award of M$35,000 for the amputation of a leg above the knee.

An award of S$35,000 for a similar injury was made by a Singapore Court in October 1977. I assume that this is the case to which Mr. Hilborne was also referring.

It is worth observing that the personal circumstances of a plaintiff make little difference to the size

of an award for pain and suffering. Whether he is rich or poor, and whatever his race or social standing, the law assumes that his liability to pain and suffering is the same. However, the circumstances of his life will have an effect on the amount of compensation for loss of amenities of life.

I do not know whether or not the Singapore or Malaysian courts, when awarding $35,000, took account of the rate of inflation in recent years. There is nothing in the reports to suggest that they did. However, I do not have before me any evidence as to the rates of inflation in Malaysia or Singapore during the past ten years. I could only say that the deterioration of the pound sterling as against the three dollars suggests that inflation has proceeded at a slower rate in those countries than in the U.K. though no country has escaped altogether the unfortunate effects of inflation during the past decade.

I was referred to a statement by the Financial Secretary of Brunei, in his budget speech in 1979, to the effect that inflation of about 13% had occurred in Brunei in the two year period August 1977 to August 1979.

I am prepared to allow for a degree of inflation in the four years since the Malaysian award, which would increase that figure by something like 25%.

I also take into account the fact the plaintiff has lost more than the average person would do by way of loss of amenities, even if his determination to overcome his difficulties has enabled him to make a better recovery than the average injured person with this disability.

I have also noted that, in a 1977 Singapore case, S$80,000 was awarded for blindness, surely a far worse deprivation.

Taking these factors into account, I award B$50,000 for pain and suffering and loss of amenities.

4. *Loss of future earnings*

This is the most important, the most speculative and consequently the most difficult part of the plaintiff's claim. I have to approach the assessment of damages under this head in the following manner: —

Firstly, I have to assess the income which the plaintiff could reasonably have been expected to continue to earn had it not been for the accident.

Secondly, I have to deduct from the above figure an estimate of what I think the plaintiff is capable of earning during the remainder of his working life.

The substraction of the second figure from the first produces what is known as the multiplicand. To this I have to apply an appropriate multiplier.

It is not disputed that, at the time of the accident, the plaintiff was earning a salary of US$2,250 p.m. Mr. Cardenas gave evidence that the salary of an Assistant Driller, the post held by Mr. McGuinness, has been increased to US$2,550 as from February 1, 1980. Mr. Cardenas also said that the rate of a Driller is US$2,850 p.m. and that of a Tool Pusher US$3,300 from the same date. He thought that about 90% of Assistant Drillers become Drillers after working for Reading & Bates for 5 to 6 years and said that the plaintiff would by now have been working for them for about 6 years. He therefore considered that the plaintiff's prospects of becoming a driller by now would have been very good. He saw no reason why the plaintiff should not have continued to serve the company until he reached 55, as the plaintiff himself had given evidence that he had intended to do.

Mr. Ellis, a Drilling Superintendent employed by the same company in Brunei, gave evidence that the plaintiff was a very hard worker with very good future prospects and that he thought he would have been promoted to driller by now.

Both Mr. Cardenas and Mr. Ellis said that there was no reason why drillers should not continue to work until the age of 55.

Mr. Ellis added that he thought that in due course the plaintiff might have become a Tool Pusher which is the next promotion grade above that of driller, though his chances of this were less than of his promotion to driller.

Mr. Cardenas made it clear that he did not think that the plaintiff would ever be able to work on an oil rig again. This seems to be only a matter of common sense, and I accept his evidence on this without hesitation.

In my view it would be fair to take the present day income of a Driller i.e. US$2,850 or B$6,270 per month as the base figure on which to assess the loss of future earnings of the plaintiff, in view of the probability that he would have attained this rank by now or in the near future.

I have indicated above that I made no allowance, in assessing special damages, for the value of housing provided to the plaintiff by his employers. As I understand it, the plaintiff would have been subject to transfer by the company to work in various parts of the world and it is likely that he would have continued to enjoy expatriate terms wherever he went.

Clearly the value of such housing would vary from country to country. While I am satisfied that something should be added to the base figure to take account of the value of housing, I can do no more than take a guess at what the addition should be.

It is common for employers who provide housing to deduct 10% of the salary of the employee by way of rent. I think this is a reasonable figure to take and will therefore add on 10% of the base figure of B$6,270 which, slightly rounded up, will increase the base figure of B$6,900 p.m.

I next have to attempt to assess the likely earning capacity of the plaintiff during the next 20 years, with virtually nothing to assist me.

TAX

Before turning to the question of the future earning capacity of the plaintiff, I must deal briefly with the question of tax.

There is no tax on personal income in Brunei. There is such a tax in Australia.

It could, therefore, be argued that an award should be increased, to take account of the plaintiff's tax liability in Australia, since the object of damages is, in general, to put the injured plaintiff in the same financial condition as if the accident had not occurred.

However, the onus of proving his damage rests on the plaintiff and it is for him to satisfy the court as to the tax to be taken into account, if it is suggested that the award should be argumented to meet it. No such evidence of Australian tax rates was given and I therefore ignore the question of tax in reaching my assessment.

FUTURE EARNING CAPACITY

The plaintiff is about to become an Australian citizen and intends to live permanently in Australia, though not necessarily in Toowoomba.

He is not the sort of man who will allow his disability to get on top of him and will, I am sure, continue to look for work which is suitable to his restricted capability.

The difficulty for him lies in the fact that he is a outdoor man, not a city worker. He left school at sixteen and has no qualification, other than a crane driver's certificate, which will not be of much use to him, since prospective employers of crane drivers would be unlikely to want to take on a crane driver with an artificial leg.

All his past jobs have been ones which require physical fitness, rather than paper qualifications. He was fortunate, and sensible, in finding work which, taking into account his modest education, was very highly paid.

He could have expected to earn what was a substantial salary by any standards, and a huge one by Brunei standards, until about the age of 55.

He is now obliged to earn a living in a world for which he is ill-equipped by education or by experience.

I am handicapped even more than is usual in these cases by lack of knowledge or evidence of Australian conditions. It is hard enough to estimate the earning capacity of a man who is injured in the country which is his domicile and that of the court which must make an assessment. It can be no more than wild surmise to attempt to gauge the future earnings of an injured man in a country which is totally different in social and economic terms from Brunei but about which the court has no evidence.

The only slim guide is the evidence of the plaintiff that he thought the basic pay of a desk clerk in Australia might be about A$150 per week, which would be about A$650 per month or B$1,560 per month. This is no more than an uniformed guess, and I cannot give any weight to it.

What I am prepared to assume, though again without evidence as to Australian conditions, is that there is in Australia a real difference between the pay of a driller and that of an unqualified man doing a sedentary job, which is what the future holds for the plaintiff.

The work of a driller is dangerous, exacting and uncomfortable, wherever it is carried out and the rates of pay anywhere will reflect this, as against the pay of far more comfortable and regular work.

He may be highly successful in business and earn more than he has lost. It is possible, but no more. Or he may have great difficulty in finding any work which will bring him an income anywhere near that which he has lost. I think I have to pitch my assessment of his earning capacity somewhere in between these two limits.

The plaintiff's counsel suggested that it would not be unreasonable for me to find that the plaintiff's earning capacity had been halved. Counsel for the defendant proposed a base figure of B$2,000 per month, which would represent only a 20% reduction in capacity on the top base figure mentioned by counsel for the plaintiff.

The Brunei Workmen's Compensation Enactment rates the loss of a leg as constituting a disability of 60% (not 70% as suggested by Dr. Hamshere). This legislation, however, caters for unskilled labourers, with very little ability to switch to other work. Such a large deduction is far too high in the case of an intelligent and determined man like this plaintiff, who is capable of much more than unskilled, repetitive, manual work.

I bear in mind that I have to try to reach a solution which is reasonably fair to both sides. I must not permit my sympathy for the plaintiff to distort my assessment of his loss of capacity. Nevertheless, there has been a substantial reduction in his likely earnings and in the probability that he would have continued to enjoy a substantial income until the age of 55.

With no confidence that I am right, and in the knowledge that this is no more than rough justice, I assess the plaintiff's loss of earning capacity at approximately one third. This gives a multiplicand, of B$2,300 per month.

THE MULTIPLIER

The English cases, which are part of common law and so should be followed in Brunei, unless special circumstances otherwise dictate, show that the range for plaintiffs in their thirties is between 9 and 15. In general, the more hazardous the occupation, the lower the multiplier.

The plaintiff has suggested 15 would be appropriate; the defendant argued for 8. I believe the one is too high and the other is too low. I think a driller's work can be reasonably equated with that of a miner or with other jobs in industry which bring the worker into constant contact with hazardous machinery, I would apply a multiplier of 12.

This gives an award, for loss of future earnings (which must, in this case be in effect an estimate of loss of future earning capacity) of B$2,300 x 12 x 12 = B$331,200.

5. *Loss of pension*

The plaintiff's Personal Benefits Report shows that he would have received a pension of US$713 if

he had remained on the service of the company to the age of 65. Mr. Cardenas added that there would be a reduction of 3% for each year by which the plaintiff was under 65 on his retirement.

I will assume that he would have retired at 55, as seems likely for a driller, with a pension of US$500 a month.

As there is no evidence to suggest a significant shortening of his life, I will take it that he would have continued to enjoy the pension for the period of a normal expectation of life.

The approach which I would have adopted, had the necessary tables been available to me, which they are not, would have been to have taken the cost of an annuity for life, purchased at the age of 55, sufficient to have produced US$500 a month.

I would then have discounted this figure, allowing for the fact that the capital sum would be in the hands of the plaintiff for 19 years before the date of purchase of the annuity and that it should have earned a reasonable return during that period.

Such rough calculations as I have been able to do suggest that this would have produced a figure of about US$20,000.

I then have to make a further deduction, as the judge did in *Lim's* case, *Lim Poh Choo* v. *Camden and Islington Area Health Authority*,[5] when he reduced the total sum of all anticipated pension payments by 5/6ths, to take account of the long period, with its attendant uncertainties, before the plaintiff would qualify for payment of the pension. To make allowances for these imponderables, the judge deducted 60%. I think it sufficient if I deduct half, as this plaintiff is closer to 55 than the plaintiff in *Lim's* case, was to her pensionable age. This leaves a sum under this head of US$10,000 or B$22,000.

6. *Cost of future renewal of prosthesis*

The plaintiff is also entitled to a reasonable sum for the cost of replacement of his artificial limb in future years and for necessary repairs to it from time to time.

The plaintiff, produced in evidence two letters from the Department of Veterans' Affairs, Brisbane, Australia. These have not been challenged.

The Deputy Commissioner of the Department says that Mr. McGuinness will need to have his artificial limb replaced about once every three years for the rest of his life and that repairs to it will have to be carried out at least twice per year.

As I have indicated above, since the medical reports do not suggest any loss of expectation of life by Mr. McGuinness, I assume that he will live until his early 70s — the normal expectation for a man of 35.

This means that there will be a need for about 12 replacements of limbs during the rest of his life. The Department assesses the present cost of a limb at A$735 every 3 years and the cost of repairs at about A$120 per annum.

Therefore the average annual expense of maintaining and replacing the artificial limb will be about A$250 plus A$120. I will increase this to A$420 to make allowance for stump socks and other expenses, such as travel and subsistence, involved in visits for repairs. There must, of course, be a substantial discount for the fact that this sum will fall into the plaintiff's hands immediately.

To achieve this, the usual practice, where it is possible to make an accurate estimate at current prices of future expenses, is to take the annual figure and apply a multiplier. In *Lim's* case the judge applied a multiplier of 18 to a woman of 40.

The multiplier in the case of medical expenses should be higher than that used in the assessment of loss of future earnings (in *Lim's* case the judge used 14) because the plaintiff's loss of earnings does not continue beyond his working life, whereas his expenses will continue until he dies.

I therefore propose to use a multiplier of 18 which produces a total of A$420 or B$1,008 x 18 = B$18,144.

CONCLUSION

I now tabulate the various awards in B$ —

1.	Special Damages — Cost of Prosthesis	187
2.	Special Damages — Loss of Part Earnings	74,265
	Total Special Damages	74,452
3.	Pain and Suffering and Loss of Amenities	50,000
4.	Loss of Future Earnings	331,200
5.	Loss of Pension	22,000
6.	Cost of Future Renewal of Prosthesis	18,144
	Total General Damages and Future Loss	421,344
	Total Award	495,796
	Deduct 10% being admitted negligence of plaintiff	49,579
		446,217

Judgment is given for the plaintiff for B$446,217 plus costs.

Interest should run on Items 1 and 2 from date of accident to judgment at 3%.

Interest should run on Item 3 from date of service of writ to judgment at 6%.

Interest on all items should run at 6% as from 21 days after judgment.

Order accordingly.

Solicitors: *Hilborne, Hawkin & Co.; Hangchi & Yeo.*